

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

MICHAEL JAMES EVANS,

Case No. 3:11-cv-00272-ST

Plaintiff,

ORDER

v.

JAMES DEACON, et al.,

Defendants.

MOSMAN, District Judge.

This prisoner civil rights action comes before the court on plaintiff's Motion for Temporary Restraining Order/Motion for Preliminary Injunction (docket #134). Plaintiff asks the court to require the law library staff at his prison to provide him with 30 sheets of pleading paper per week. According to the Declaration of Justin Kidd and its accompanying documentation, the prison law library increased plaintiff's paper allowance to 30 sheets per week as of February 1, 2013. Kidd Declaration, Exhibit 3, p. 1. As a result, plaintiff's request for additional paper is now moot.

Plaintiff also informs the court that Corporal Klitch, a non-party, seized photographic evidence pertinent to his criminal case. The evidence consists of at least one sexually explicit photograph of one of his alleged victims who, according to plaintiff, is no longer considered a victim. The Oregon Department of Corrections learned that plaintiff was showing the explicit photograph to other inmates and confiscated the evidence on the basis that it constituted a danger to the safety and security of the prison. Kidd Declaration, p. 2. Plaintiff asks the court to order the Oregon Department of Corrections to return the photograph to him immediately.

A plaintiff seeking a preliminary injunction must demonstrate at least some likelihood that he will succeed on the merits of his claim. *Winter v. Natural Res. Def. Council, Inc.*, 129 S.Ct. 365, 374 (2008). The confiscation of the sexually explicit photograph does not relate to any of the four claims contained in the Third Amended Complaint, therefore plaintiff is unable to show that he has any chance of success on a claim not at issue in this case.¹ As such, plaintiff is not entitled to preliminary injunctive relief.

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¹ At issue in plaintiff's Third Amended Complaint are First, Eighth, and Fourteenth Amendment claims which pertain to plaintiff's allegedly unlawful placement in Administrative Segregation Unit without due process, an Eighth Amendment failure to protect claim, a First Amendment retaliation claim, and a due process claim based upon plaintiff's alleged inability to present a defense during a prison disciplinary hearing.

CONCLUSION

Plaintiff's Motion for Temporary Restraining Order/Motion for Preliminary Injunction (docket #134) is denied.

IT IS SO ORDERED.

DATED this 13th day of February, 2013.

/s/ Michael W. Mosman
Michael W. Mosman
United States District Judge